

July 1, 2013 Hours of Service Changes: All you need to know about rest breaks and restarts



Daren Hansen

J. J. Keller & Associates, Inc.®



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Ready or not, changes have arrived to the U.S. federal hours-of-service (HOS) rules. Beginning July 1, 2013, most commercial truck drivers will need to comply with new requirements for periodic rest breaks and new restrictions on use of the 34-hour “restart” option.

Why the changes? According to the Federal Motor Carrier Safety Administration (FMCSA), the revisions will help the hardest working drivers get more rest — both on a daily and weekly basis — thereby reducing fatigue and preventing accidents. Unfortunately for many, the changes will also mean less productivity, less flexibility, and higher costs, including training expenses.

Unless your drivers work less than 8 or 9 hours per day or are simply exempt from the new requirements, chances are your drivers’ schedules will need some adjusting. This whitepaper will examine the “who, what, when, where, and why” of the new HOS rules, plus provide some tips to make compliance easier and help manage your risk.

Who Has to Comply?

The new hours-of-service requirements are found in the Federal Motor Carrier Safety Regulations (FMCSRs), so they apply to drivers and motor carriers who are operating commercial motor vehicles and:

- Are engaged in interstate commerce and are therefore subject to the FMCSA’s (federal) safety regulations; or
- Are engaged in intrastate commerce — conducted entirely within a single state — and that state has adopted and enforces the new HOS regulations.

As defined under federal rules, a “commercial motor vehicle” is any vehicle used on a public road in interstate commerce when the vehicle or combination of vehicles:

- Weighs or is rated at 10,001 pounds or more;
- Is used to haul hazardous materials in a quantity that requires a placard;
- Is designed or used to transport 16 or more passengers (including the driver);* or
- Is designed or used to transport 9 or more passengers (including the driver) for direct compensation.*

***NOTE:** Although portions of the new hours-of-service rules apply to passenger-carrying vehicles, the changes taking place on July 1 apply only to truck drivers (i.e., drivers of property-carrying vehicles).

In general, the states fall into one of three categories

Intrastate Variations

If your vehicles never cross state lines and are otherwise not involved in interstate commerce (sometimes in-state movements are regulated as interstate commerce), then you have to follow the rules of your home state. In many cases, those rules will be the same as the federal rules, but some states have unique variations.

In general, the states fall into one of three categories:

1. Most states simply “adopt” the federal hours-of-service rules as their own and the rules are the same whether you cross the state line or not. In some cases, it may take the state months or years to adopt a new federal rule, so a particular state may or may not enforce the new HOS rules on July 1, 2013.
2. Some states adopt the federal rules but have their own unique definition of what a “commercial motor vehicle” is. For example, drivers of vehicles under 26,000 pounds may be exempt.
3. Some states have their own unique hours-of-service limits and may not adopt the new federal HOS rules.

A compliance guide that includes state-level requirements can be a big help in understanding the rules in your state.

Where Are the New Rules?

The new hours-of-service rules have been “on the books” for many months, so you should be able to find them in any current version of the FMCSRs. They were issued on December 27, 2011, and took effect on February 27, 2012, although carriers and drivers were given until July 1, 2013, to comply with the most significant changes.

The changes that most drivers and carriers need to worry about are found in:

- 49 CFR §395.2, the definition of “on duty time”; and
- 49 CFR §395.3, the basic HOS limits for drivers of property-carrying vehicles.

Certain activities that used to be “on duty” are now “off duty,” potentially making it easier to satisfy rest-break requirements.

On Duty

The first changes that went into effect under the new rules were actually beneficial for many drivers. The definition of on-duty time was changed as of February 27, 2012, so that certain activities that used to be “on duty” are now “off duty,” potentially making it easier to satisfy rest-break requirements. These activities are now “off duty”:

- **Resting in a parked vehicle, including a truck, bus, or motorcoach.** If a driver is relieved of all duty and obligations and is free to rest, he or she can now rest in a parked vehicle and log that time as “off duty.” This does not include situations where the driver is required to stay with the vehicle and/or perform any type of work.
- **Up to 2 hours riding in the passenger seat of a moving, property-carrying CMV immediately before or after spending at least 8 consecutive hours in a sleeper berth.** This especially benefits team drivers who want to swap 10-hour driving periods without having to spend an entire 10 consecutive hours in a sleeper berth.

Mandatory Breaks

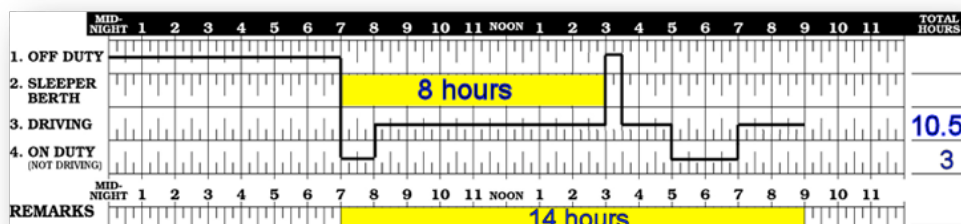
The first day of July 2013 brings several changes to the rules for drivers of property-carrying vehicles, including mandatory rest breaks and changes to the 34-hour “restart” option.

The new rest-break requirement simply says:

“After June 30, 2013, driving is not permitted if more than 8 hours have passed since the end of the driver’s last off-duty or sleeper-berth period of at least 30 minutes.”

In simple terms, this means that at any given point in a driver’s workday, if he or she wants to continue driving a CMV, the driver must look back at the past 8 consecutive hours and see if the last off-duty and/or sleeper-berth period of at least 30 minutes ended within that time. If it did not, then a 30-minute break is required before any more CMV driving can be done.

Consider this example:



The break must be spent “off duty” and/or in a sleeper berth — it cannot be spent “on duty” unless transporting certain explosives.

For the first 8 hours of this driver’s workday, the last break “of at least 30 minutes” ended at 7:00 a.m. The driver was eligible to drive for 8 hours after the end of that break without getting another break, or until 3:00 p.m. At 3:00 p.m., the driver had to stop driving and take another 30-minute break in order to do any more CMV driving. With the 14-hour limit, the driver had to stop driving by 9:00 p.m.

A few things to note about the break requirement:

1. The 8-hour period includes all consecutive time, not just driving time. On-duty time, driving time, and short rest breaks of less than 30 minutes are all counted against the 8-hour limit.
2. Drivers can “work” as much as they want to without taking the break. The rule only limits their ability to drive a CMV after going 8 hours without a break.
3. The break must be spent “off duty” and/or in a sleeper berth. It cannot be spent “on duty” unless transporting certain explosives (see below).
4. Like other off-duty time of less than 10 hours, the break counts against the 14-hour limit.

Who Needs a Break?

The new break requirement applies to most drivers of property-carrying vehicles who are subject to the federal hours-of-service rules, whether they are exempt from certain HOS requirements or not, including:

- Short haul (100- and 150-air-mile) drivers who are not required to log;

- Oilfield drivers;
- Drivers transporting construction materials and equipment;
- Drivers using the “adverse conditions” exception;
- Driver-salespersons;
- Hawaii drivers; and
- Drivers engaged in groundwater well drilling operations

Drivers who are exempt from having to fill out logs (100/150-air-mile drivers) should not have to change their recordkeeping practices in order to comply with the break requirement. That is, no special documentation is required to show that the break was taken. However, because these drivers are required to record their total on-duty time each day, that total should not include the mandatory breaks, which must be spent off duty.

What About Transportation of Hazmat?

If hazardous materials are being transported, drivers also need to take the mandatory break, and it must be spent “off duty” and/or in a sleeper berth unless transporting Division 1.1, 1.2, or 1.3 explosives. Drivers transporting these explosives must remain “on duty” at all times while attending the load (§397.5), so they are allowed to show their mandatory breaks as “on duty” as long as they enter a remark on the log to designate a 30-minute period as their break. No other work (other than attending to the load) can be performed during the break.

Restart Restriction #1: Nighttime Rest

In addition to needing daily breaks, drivers using the 34-hour “restart” to reset their weekly hours under the 60/70-hour rule will face two new restrictions beginning July 1, 2013.

One restriction will force drivers to get two nighttime periods of rest as part of their “restart” break, even if they normally work at night. According to the FMCSA, this change was necessary because research shows that nighttime rest is always better than daytime rest. Specifically, the rule says:

“After June 30, 2013, any period of 7 consecutive days may end with the beginning of an off-duty period of 34 or more consecutive hours that includes two periods from 1 a.m. to 5 a.m.”

In other words, for a rest break to count as a “restart,” it must include the 28 consecutive hours from 1 a.m. on the first day until 5 a.m. on the following day, plus enough additional time on either end (at least 6 hours) to total at least 34 hours.

Drivers using the 34-hour “restart” to reset their weekly hours under the 60/70-hour rule will face two new restrictions

Some drivers are going to need much more than 34 hours off in order to get their restart.



What this means is that drivers who want to get their restart after “only” 34 hours off must begin the break between the hours of 7:00 p.m. and 1:00 a.m. If the break is started before 7:00 p.m. or after 1:00 a.m., it will need to be longer than 34 hours. In fact, some drivers are going to need much more than 34 hours off in order to get their restart, depending on when they start the break.

The restart will still be optional. Drivers are not required to take 34 hours off every week.

For example, these are all potentially valid restart breaks:

- 7 p.m. Thursday to 5 a.m. Saturday = 34 hours
- 11 p.m. Friday to 9 a.m. Sunday = 34 hours
- 9 a.m. Saturday to 5 a.m. Monday = 44 hours
- 3 a.m. Saturday to 5 a.m. Monday = 50 hours

A few notes about this new provision:

1. The break can be “off duty” and/or in a sleeper berth, but must not include any on-duty time.
2. The break does NOT have to be taken at the driver’s home or home terminal — it can be taken in any location — but it must be logged based on the time standard in effect at the home terminal (just like all other activities shown on the log).
3. Drivers on a team will still be able to spend part of their restart break in a sleeper berth while the vehicle is moving, but the vehicle will need to be stopped for at least the 28 hours from 1 a.m. to 5 a.m. on two consecutive nights.
4. The restart will still be optional. Drivers are not required to take 34 hours off every week. See below for more details.

This limit is designed to prevent drivers from potentially putting in more than 80 hours per week

Restart Restriction #2: 168 Hours

The other restriction being placed on the 34-hour restart is that drivers will not be able to start another “restart” break until 168 consecutive hours — exactly 7 days — have passed since the start of their last “restart” break.

According to the FMCSA, this limit is designed to prevent drivers from working consecutive 14-hour days, taking a restart, and going right back to 14-hour days, potentially putting in more than 80 hours per week. Here’s an example of how it will work. A driver who begins a restart break at 8:00 p.m. on a Monday will not be able to start another restart break until 8:00 p.m. or later on the following Monday, even if the driver runs out of hours long before then.

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
	1	2	3	4	5	6
			RESTART 8:00 p.m. - 6:00 a.m.		168 HOURS	
7	8	9	10	11	12	13
			Restart can begin at 8 p.m. Tuesday or later			

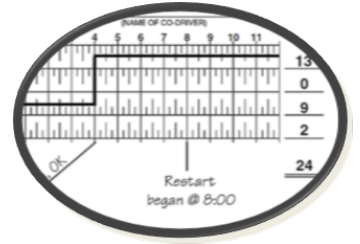
Even if your drivers regularly use the restart option, they may not truly need it.

Compliance with the new hours-of-service rules is mandatory as of 12:01 a.m. on Monday, July 1, 2013.

The rules do not include a grace period for compliance.

This change does not prevent drivers from going off duty for multiple 34-hour periods each week. However, if a driver takes more than one period of 34 hours off duty within a 168-hour period, only one of those breaks (if any) will count as a restart, and the driver must indicate which rest period is being used as the restart by entering a remark on the log.

There are no rules specifying when the remark has to appear or what it has to say, but a recommended practice is to note when the restart period began.



What's the Alternative?

As noted previously, the restart provision is optional, and drivers who don't need to get a restart will not have to worry about the new restrictions. Even if your drivers regularly use the restart option, they may not truly need it.

For example, a driver could work 8 hours per day, every day, and never reach the 60- or 70-hour limit ($7 \times 8 = 56$) and therefore never need to get a restart. The rules do not require drivers to take 34 hours off duty every week.

Without getting a restart, how do you comply with the 60- or 70-hour limit? Simply keep a running total or "recap" of your total on-duty hours over the past 7 or 8 days, do the math each day, and see where you stand on compliance. If you don't reach the 60/70-hour limit, then you don't need extra time off.

Drivers who work long days and do reach or exceed the 60/70-hour limit will need to stop driving until they get back into compliance and "gain back" enough hours to drive. This may mean just a few hours off or it could mean more than a day off. Or, in some cases, a 34-hour restart may be the quickest way to gain back driving time.

Just keep in mind that there is an alternative to using the 34-hour restart, and drivers who don't need to use the restart option — along with the new restrictions on its use — may find that the alternative makes compliance easier.

The new restrictions on the 34-hour restart will NOT apply to the 24-hour restart option, although drivers who are eligible for a 24-hour restart will be subject to the mandatory 30-minute break provision.

When is Compliance Required?

Compliance with the new hours-of-service rules is mandatory as of 12:01 a.m. on Monday, July 1, 2013. Certain state enforcement personnel may be willing to "educate" drivers or issue warnings instead of citations during the early days of compliance, but motor carriers and drivers should be prepared to be in full compliance on July 1. The rules do not include a grace period for compliance.

In part, this means that any 34-hour “restart” break taken after June 30, 2013, must not begin until 168 hours after the beginning of the last restart break, even if the last restart break was taken before July 1.

What About Drivers From Canada and Mexico?

Drivers from Canada and Mexico who come into the United States will need to be in full compliance with the U.S. hours-of-service rules upon crossing the border, just like any U.S. driver. This includes the need to comply with the mandatory break requirement and the restrictions on getting a “restart.”

For example, a valid 36- or 72-hour restart taken in Canada will only be accepted as a restart in the United States if it includes two consecutive periods from 1 a.m. to 5 a.m. and was not started until 168 hours after the prior restart period. If the restart is not valid in the United States, then it will simply be ignored for compliance purposes (other than counting as a valid 10-hour break).

The changes coming to the hours-of-service rules may be the most significant HOS changes since 2003.

Final Thoughts

Depending on your operations, the changes coming to the hours-of-service rules may be the most significant HOS changes since 2003. If your drivers work a regular schedule that includes a daily lunch break and the weekends off, they may not be affected by the new requirements. However, if they work long hours with irregular routes, rely on the restart, regularly work nights, and/or cannot normally go off duty during their shift, the new rules could take significant adjustment and training.

Don't wait until July 1 to update your HOS policies, software, and reference materials and train affected drivers, dispatchers, shippers, and supervisors. In fact, you may want to “test drive” the new rules before then. Because they're more restrictive than current rules, you can have drivers follow the new restrictions today to better plan for compliance tomorrow.

Your compliance with the hours-of-service rules is being tracked and judged like never before, and the consequences of non-compliance can be severe. Don't take a chance — learn the new rules and make sure your company is on the forefront of compliance on July 1st and beyond.

About the Author

Daren Hansen

J. J. Keller & Associates, Inc.®

A Senior Editor in the Transportation Publishing Department of Editorial Resources at J. J. Keller & Associates, Daren Hansen is responsible for writing and editing a variety of safety-related publications, products and services for the trucking and busing industries. Daren's primary areas of expertise include the Federal Motor Carrier Safety Regulations related to hours of service, cargo securement, drug and alcohol testing, and driver qualification. He has spoken and written extensively on these topics, both for clients and for industry groups, and is a member of the National Private Truck Council's Legislative & Regulatory Affairs Committee.

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